

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
(Northern Division)**

PLUMBERS AND STEAMFITTERS
LOCAL 486 MEDICAL FUND,
by its Trustee,
Bernard J. Vondersmith

Plaintiff

v.

RITA L. BOOKS

and

ROGER BOOKS

and

NATHANIEL FICK, P.C.
CLIENT TRUST ACCOUNT

Defendants

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CIVIL ACTION NO.

MJG 03-219

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**MOTION TO DISMISS
AMENDED COMPLAINT AS TO
DEFENDANT NATHANIEL FICK, P.C. CLIENT TRUST ACCOUNT**

Defendant NATHANIEL FICK, P.C. CLIENT TRUST ACCOUNT, by undersigned counsel, and proceeding under applicable rules, here submits this motion to dismiss any and all claims against it asserted in the Amended Complaint recently filed by Plaintiff Plumbers and Steamfitters Local 486 Medical Fund. And Defendant states:

1. The action advances a subrogation claim by Plaintiff against recovery obtained by Defendant Rita Books in an action against a third party tortfeasor who was responsible for an vehicle accident that resulted in substantial injuries to Rita Books, as well as uncompensated losses to Roger Books and to Rita and Roger Books, as husband and wife..

2. As originally filed, the Complaint as to this subrogation claim, named as Defendants not only Rita and Roger Books, but also their counsel Nathaniel Fick, Esq., the Fick & Petty Escrow Account, and the Personal Injury Trust for the Benefit of Rita Books.

3. The Complaint sought various relief, including a temporary restraining order, injunctive relief, and constructive trust against any or all Defendants, to satisfy the claimed subrogation interest asserted by Plaintiff, which subrogation claim is for a stated sum in the amount of \$57,395.60..

4. Subsequent to this Complaint, in further negotiations between Nathaniel Fick as counsel for the Books and counsel for Plaintiff Plumbers and Steamfitters Local 486 Medical Fund, an Order was agreed upon to be entered by this Court on January 30, 2003.

5. The Order required that the sum of \$57,395.60 be paid into court, there to be held “in an interest bearing federally insured account to be disbursed pursuant to further Order”, and dismissed all claims against Books' counsel and counsel's escrow fund.

6. The Order also declared the relief of temporary restraining order and preliminary injunction as moot, denied a request by Plaintiff for accelerated discovery, and set dates for a summary judgment motion by the plan on its action and claims for relief.

7. By this Order, all claims against Nathaniel Fick or accounts or trusts held by Nathaniel Fick as counsel for the Books, were to be dismissed.

8. Further, in compliance with the Order, on or about January 31, 2003, Nathaniel Fick has placed into escrow, the sum of \$57,395.60, in an interest bearing account with Bank of America, on behalf of the U.S. District Court of Maryland (account no. 375 328 1128).

9. Thus, Nathaniel Fick does not have the subrogation amount and has no control over it, and neither does any trust or other similar account held by Nathaniel Fick on behalf of Rita and Roger Books.

10. Counsel for Plaintiff is well aware of these events.

11. Nevertheless, on or about February 26, 2003, Plaintiff has submitted the present Amended Complaint, which states the same claims and causes of action, and which essentially only differs in the naming of Defendants.

12. Further, the Amended Complaint names as a Defendant "Nathaniel Fick, P.C. Client Trust Account."

13. This inclusion by Plaintiff of a Nathaniel Fick Client Trust Account as a named Defendant in the Amended Complaint is contrary to this Court's Order and further contravenes or ignores the fact that Nathaniel Fick already has placed the entire subrogation amount at issue, in escrow.

14. There is no other substantial basis whatsoever for any client account or trust account held by Nathaniel Fick regarding this matter to be continued or to be named as a Defendant in any Amended Complaint.

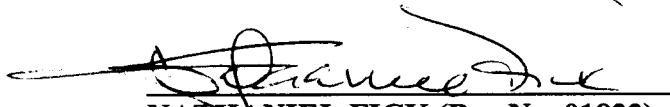
15. Therefore, the Amended Complaint is improper with regard to the Nathaniel Fick Client Trust Account as a Defendant.

16. The Nathaniel Fick Client Trust Account therefore demands that Plaintiff by consent or by line, or by Second Amended Complaint, or in any other way as directed by this Court, remove the Nathaniel Fick Client Trust Account as a Defendant in this matter.

17. Defendant also requests costs and attorney fees for the necessity of filing this motion to dismiss.

RESPECTFULLY SUBMITTED,

Nathaniel Fick, P.C.

A handwritten signature in black ink, appearing to read 'Nathaniel Fick', is written over a horizontal line.

NATHANIEL FICK (Bar No. 01822)

Fick & Petty

1426 East Joppa Road

Towson, MD 21286-5982

(410) 321-6000

Fax: (410) 321-5707

Attorney for

Nathaniel Fick Client Trust Account

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 14th day of March, 2003, I mailed, postage prepaid, a copy of this Motion to Dismiss, to:

COREY SMITH BOTT, Esq.
Abato, Rubenstein and Abato, P.A.
809 Gleneagles Court
Suite 320
Baltimore, Maryland 21286

Attorney for Plaintiff


NATHANIEL FICK